

FILED

AUG 27 2015

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *mf* DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GARY E. KING,
Inmate Booking No. 14740027

Plaintiff,

vs.

DONALD RUMSFELD,

Defendant.

Civil No. 15cv1271 BEN (PCL)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
AND/OR FAILING TO MOVE TO
PROCEED *IN FORMA PAUPERIS***

Plaintiff Gary King, proceeding *pro se*, is currently incarcerated at the San Diego Central Jail located in San Diego, California. Plaintiff filed documents using San Diego County Sheriff's Department inmate stationary. (Doc. No. 1). Because Plaintiff is proceeding without counsel, the Court has liberally construed this as an attempt to commence a civil action. *See Karim-Panahi v. L.A. Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988) (concluding that where a plaintiff appears in propria persona, the Court must construe his pleadings liberally and afford plaintiff any benefit of the doubt).

I. Failure to Pay Filing Fee or Request *In Forma Pauperis* ("IFP") Status

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing

1 fee of \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a party's
 2 failure to pay this filing fee only if the party is granted leave to proceed IFP pursuant
 3 to 28 U.S.C. § 1915(a). However, if the plaintiff is a prisoner and he is granted leave
 4 to proceed IFP, he remains obligated to pay the entire fee in "increments," *see*
 5 *Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), regardless of whether his
 6 action is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2); *Taylor v.*
 7 *Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

8 Plaintiff has not prepaid the \$400 fee required to commence a civil action, nor
 9 has he submitted a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a). Thus, the
 10 case cannot yet proceed. *See* 28 U.S.C. § 1914(a). Although Plaintiff filed his prison
 11 certificate, he failed to file an actual motion. Also, Plaintiff did not file a "certified
 12 copy of the trust fund account statement (or institutional equivalent) for the prisoner
 13 for the 6-month period immediately preceding the filing of the complaint. . . ." 28
 14 U.S.C. § 1915(a)(2).

15 **II. Conclusion and Order**

16 For the reasons set forth above, the Court:

17 (1) **DISMISSES** this action without prejudice for failing to pay the \$400
 18 civil filing and administrative fee or submit a Motion to Proceed IFP pursuant to 28
 19 U.S.C. §§ 1914(a) and 1915(a); and

20 (2) **GRANTS** Plaintiff 45 days leave from the date this Order is filed to:
 21 (a) prepay the entire \$400 fee; *or* (b) complete and file a Motion to Proceed IFP
 22 which includes a certified copy of his trust account statement for the 6-month period
 23 preceding the filing of his Complaint.² *See* 28 U.S.C. § 1915(a)(2); CivLR 3.2(b).

24
 25 ¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after
 26 May 1, 2013, must pay an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a)
 27 (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule) (eff. May 1,
 2013). However, the additional \$50 administrative fee is waived if the plaintiff is
 granted leave to proceed IFP. *Id.*

28 ² Plaintiff is cautioned that if he chooses to proceed further by either pre-paying
 the full \$400 civil filing fee, or submitting a properly supported Motion to Proceed IFP,
 his Complaint will be screened before service upon any defendant and may be dismissed

1 **IT IS FURTHER ORDERED** that the Clerk of the Court will provide
 2 Plaintiff with this Court's approved form "Motion and Declaration in Support of
 3 Motion to Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400
 4 civil filing fee or complete and submit the enclosed Motion to Proceed IFP within
 5 that time, this action will remain dismissed without prejudice and without further
 6 Order of the Court.

7 In addition, the Clerk of Court is directed to mail Plaintiff a blank court
 8 approved civil rights complaint form and a blank court approved petition for writ of
 9 habeas corpus form.

10 DATED: August 26, 2015

11 
 12 HON. ROGER T. BENITEZ
 13 United States District Judge

14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26 pursuant to 28 U.S.C. §§ 1915A(b) or 1915(e)(2)(B). *See Lopez v. Smith*, 203 F.3d 1122,
 27 1126-27 (9th Cir. 2000) (en banc) (noting that § 1915(e) "not only permits but requires"
 28 the court to sua sponte dismiss an *in forma pauperis* complaint that is frivolous,
 malicious, fails to state a claim, or seeks damages from defendants who are immune); *see*
 also *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing similar
 screening required by § 1915A of all complaints filed by prisoners "seeking redress from
 a governmental entity or officer or employee of a governmental entity.").